

In a reversal, Los Angeles DA favors easing 3-strikes law

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SACRAMENTO – In 2004, Los Angeles County District Attorney Steve Cooley was part of a powerful coalition that helped defeat Proposition 66, a measure that would have relaxed the state's three-strikes sentencing law.

Now Cooley's back in the middle of the fight.

But this time, the Republican prosecutor has broken with his colleagues by leading an effort to liberalize California's three-strikes law, the nation's toughest.

Cooley has joined Brian Dunn, an attorney from the late Johnnie Cochran's law firm, to promote a measure for the November ballot.

The law, approved in 1994 by voters and the Legislature, doubles the sentence for a defendant convicted of any second felony if the first strike was classified as a “violent” or “serious” crime.



Steve Cooley

A person with two felonies for such crimes faces a sentence of 25 years to life for any third felony.

Since a third strike doesn't have to be for a violent or serious crime, some criminals have received a sentence of 25 years to life for committing petty theft.

The latest proposal to change the law is more modest than Proposition 66, but is certain to trigger a similar, high-pitched political battle.

It would require a third strike to be a violent or serious felony.

But that requirement would not apply to a defendant who had a previous conviction for murder, rape, child molestation or any felony punishable by life imprisonment.

Cooley's new role has surprised leaders on both sides of the debate.

He's violating an unwritten rule of California politics, which dictates that elected officials – especially those in law enforcement – avoid any stance that an opponent could possibly

label soft on crime.

“I’m shocked he would team up with a member of a firm that is so pro-prisoner’s rights,” said Harriet Salarno, president of Crime Victims United of California, which played a key role in passing the law.

Dunn, a criminal defense attorney, said he was stunned when Cooley agreed to join his effort.

“I didn’t believe my ears. I said, ‘What’s the catch?’ ” Dunn said. “Then I realized this is an issue he cares about.”

So far, Cooley stands alone among prosecutors.

Directors of the California District Attorneys Association voted unanimously to oppose the measure at their meeting last month.

“Three strikes is working the way it is,” said San Diego County District Attorney Bonnie Dumanis.

The association, Dumanis said, found in a study that third strikers whose latest crime was neither violent nor serious frequently had an extensive criminal history that justified their long sentences.

“The DA’s are using the law effectively and appropriately,” she said.

Dave LaBahn, executive director of the California District Attorneys Association, said board members worried about a provision that could allow thousands of third strikers to be released.

Some prosecutors, LaBahn said, were “very disappointed” that Cooley would lead an effort to change the law.

But Cooley believes voters will support the initiative.

“This proposal is going against the grain of the majority of the rest of the elected DA’s, but it’s not going against the grain of the majority of the public,” he said.

Still, the question remains. Why would Cooley, a former reserve Los Angeles police officer and career prosecutor, lead an effort that would take power away from prosecutors?

“He’s an old-fashioned prosecutor who believes the job of the prosecutor isn’t just to get the longest possible sentence, but to do justice,” said Cooley’s Sacramento representative, James Provenza.

Cooley said he wants to change the law to preserve it.

“I think we're saving the three-strikes law,” he said.

The law, Cooley contends, has barely survived challenges.

Stole golf clubs

In 2003, the U.S. Supreme Court upheld the law against a claim that it was “cruel and unusual” punishment to give a 25-years-to-life sentence to someone convicted of stealing golf clubs. But it was a 5-4 decision from a largely conservative court, Cooley said.

In 2004, polls showed that Proposition 66 had strong public support until a last-minute blitz by Gov. Arnold Schwarzenegger, then at the peak of his popularity, helped turn the tide.

The measure lost, 47 percent to 53 percent.

“We only defeated it because we had a popular governor who worked his tail off,” Cooley said.

Last year, Cooley said, an early proposal by Dunn would have also put three strikes at risk by making sweeping changes.

Cooley said his proposal would ensure proportionality in sentencing and eliminate the high-profile cases cited by critics who want to eviscerate three strikes.

Some third-strike prisoners are serving 25-years-to-life terms for property crimes, including stealing videos and a computer printer.

In such cases, these criminals serve longer than a prisoner convicted of second-degree murder, which carries a 15-years-to-life sentence.

Critics have long complained that prosecutors vary so widely in their application of three strikes that it creates an unfair system of justice. They also say the measure is costly: the Legislative Analyst's Office estimates that it adds \$500 million a year to the state budget.

Strong backers

Before it was passed, prosecutors were among the leading critics of three strikes, supporting an alternative version. Yet after it passed, prosecutors have become its most vocal supporters.

Former Los Angeles County District Attorney Gil Garcetti illustrates the change. A critic during the bill's trip through the Legislature, Garcetti became a zealous defender, frequently seeking the maximum punishment against repeat offenders.

Cooley developed his views while serving as one of Garcetti's head deputies.

During Cooley's tenure heading the San Fernando branch office in the early 1990s, he evaluated about 160 three-strikes cases. His conclusion: In most cases, the nature of the latest offense should determine whether a repeat offender gets charged with a third strike.

“There has to be a strong sense of proportionality in sentencing,” he said.

In 2000, Cooley defeated Garcetti and promised to use the law more sparingly. His policies form the basis for the new measure.

The initiative would do nothing to change sentences for second strikers, but would allow some third strikers to ask the court to change their sentence.

Currently, 7,813 third strikers are serving 25-years-to-life sentences in state prisons, including 2,399 whose latest felony was a property crime, and 1,292 whose latest conviction was a drug crime, according to the California Department of Corrections and Rehabilitation.

Cooley estimates that about 2,400 third strikers could ask to have their sentences reduced under his initiative.

Reduced sentences

By one estimate, Proposition 66 would have allowed about 5,000 third strikers to seek a reduction in their sentences. That measure would have narrowed the definition of residential burglary, counting it as a strike only if a prosecutor could prove someone else was in the home at the time of the burglary.

The new proposal maintains residential burglary's status as a strike. It was a key point in negotiations between Cooley and Dunn.

Dunn said he believed that residential burglary should not be counted as a strike because it's a property crime.

Cooley was equally adamant that it be left in the law. “I've seen crimes of violence occur during a burglary. I consider burglary to be a serious felony,” he said.

When Dunn agreed to keep burglary as a strike, Cooley decided to be co-sponsor of the ballot measure.

For Dunn, winning support from Cooley was worth the sacrifice. “The biggest problem with Proposition 66 is that it didn't have support from anyone with a badge,” Dunn said.

But besides support from Cooley, the measure's proponents need something else: about \$1 million.

To qualify for the November ballot, they will have to gather about 373,000 valid signatures in about six weeks. Dunn said backers will have the money to pay for signature gatherers.

Dunn said he admired Cooley for risking the wrath of his colleagues.

“Steve has shown a lot of courage,” Dunn said.